IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7767 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)

Versus

I B PATEL - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 20/07/2005

ORAL JUDGMENT

1. In this petition, notice is already issued by this Court for final disposal returnable on 30th June, 2005. Though served, nobody appears on behalf of the respondent workman thereafter, the matter was adjourned so as to give chance to the respondent workman but as nobody appears on behalf of the respondent workman, this Court has no other alternative except to decide and dispose of the present Special Civil Application on merits ex-parte.
2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Surat dated 31stAugust, 2004 passed in Reference (IT) No.26/2000 in partly allowing the same and by quashing and setting the order of punishment dated 30.10.96 passed by the Disciplinary Authority by which, the Disciplinary Authority has imposed the punishment of withholding of 5 increments with future permanent effect and not paying any difference from 1996 till the Reference is decided.
3. The respondent workman was serving as a conductor with the petitioner corporation and while he was on duty on 18.4.1996 on Vyara-Ahwa route, the bus was checked by the Checking Squad and it was found that 2 passengers were not issued the tickets though the fare was collected for which, the respondent workman was charge-sheeted and after conclusion of the inquiry the charge of not issuing the tickets, though the fare was collected came to be proved and therefore, the Disciplinary Authority by order dated 30.10.1996 imposed the punishment of withholding of 5 increments with future permanent effect. Being aggrieved and dissatisfied with the same, the respondent workman raised the industrial dispute, which was referred to Industrial Tribunal for its adjudication being Reference (IT) No.26/2000. Considering the evidence on record and holding that there was some negligence on the part of the conductor by not closing the way bill before the bus had started and there were 63 passengers in the bus, the Industrial Tribunal has while holding that the order of the punishment of withholding of 5 increments with future permanent effect is too harsh and it is disproportionate to the misconduct proved, interfered with the same by quashing and setting it aside and thus, partly allowed the Reference. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Surat on 31.08.2004 passed in Reference (IT) No.26/2000, the petitioner corporation has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri Hardik Rawal learned advocate appearing on behalf of the petitioner corporation has vehemently submitted that the Industrial Tribunal has materially erred in not considering the default card at Exh.11/15, which goes to show that in 8 years of service career, there were 16 defaults against the respondent workman out of which, 15 defaults were with regard to non-issuance of tickets. He has also further submitted that assuming that there was negligence, in that case also, considering his past defaults Industrial Tribunal was not justified in not imposing any penalty and/or any punishment at all and has materially erred in quashing and setting aside the order of punishment imposed by the Disciplinary Authority of withholding of 5 increments with future permanent effect. Therefore it is requested to allow the present Special Civil Application.

5. It appears from the record and from default card at Exh.11/15 there are 16 defaults in the credit of the respondent workman in 8 years of service career out of which, 15 defaults are with regard to non-issuance of tickets. Considering the aforesaid facts alone and considering the fact that in the present case, assuming that there was a negligence as held by the Industrial Tribunal, the Industrial Tribunal was not justified in not imposing any punishment at all except non-payment of the arrears for the period between 1996 till passing of theaward by quashing and setting aside the order passed by the Disciplinary Authority. It appears from the record and the fact stated hereinabove that the Industrial Tribunal has not exercised its jurisdiction under Section 11(A) of the Industrial Dispute Act judiciously, and non-imposition of any punishment itself is disproportionate. Considering the evidence on record and negligence having been proved and the default card showing past defaults, it will be in the fitness of things if punishment of withholding of 3 increments with future permanent effect is imposed by modifying the judgment and award passed by the Industrial Tribunal, Surat.

6. For the reasons stated above, the petition succeeds partly. The judgment and award passed by the Industrial Tribunal, Surat, dated 31.08.2004 passed in Reference (IT) No.26/2000 is modified to the extent that there will be punishment of withholding of 3 increments with future permanent effect instead of withholding of 5 increments with future permanent effect as ordered by the Disciplinary Authority.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.SHAH, J.)

kdc.